

LAW AND THE ART WORLD

Misinformation abounds on charitable deductions

By Bill Frazier ©2014

This article revisits the issue of charitable deductions for an artist's donation of his own work to a non-profit or tax-exempt organization.

Quite a few artists have called me in the last month about information presented, or heard, at a recent major art show apparently either encouraging artists to donate work, or informing them that work donated would earn a charitable tax deduction. This would also include sales through charitable auctions and an additional deduction for buyers' premiums. **THIS IS DEFINITELY NOT THE LAW!**

I would normally consider this just a misunderstanding by one artist except for the number of calls I received and the details presented. I hope this clears up any misconceptions by both organizations and artists.

I do not see the logic of even arguing that the artist would be entitled to a charitable deduction for the amount of a buyer's premium. The artist would have nothing to do with it. For those who may not be familiar with a "buyer's premium," it is an additional fee often charged by auctions above the actual bid sales price, typically from ten to fifteen per cent, which goes to the sponsor and not to the artist.

Artists do not receive a charitable tax deduction for the donation of their own artwork to charities, nonprofit organizations and tax-exempt organizations, nor for sales at auctions sponsored by such organizations. This has been the law since 1969, and it has not changed. An attempt to take such a deduction will simply red flag your tax return for an audit.

To those of you who have been given this information, you have been misinformed. If it was given to you by an art-show sponsor, it is incorrect, and shows negligence on the sponsor's part. If it was given to you by an IRS representative, it is still incorrect. The IRS is not bound by the statements of its employees and their interpretations of the law and tax regulations may vary from one office to another.

In any case, such donations by artists are not deductible. Similarly, donations of one's time and work product are not deductible by lawyers, doctors, carpenters, accountants, writers or anyone else. Artists have not been singled out.

However, a number of efforts have been made to allow such deductions and many bills have been introduced in the United States Congress to enable such deductions. Currently pending is the Artist-Museum Partnership Act of 2013 (H.R. 2482) to allow this deduction. This same, or similar bills, has been introduced in the United States Congress and Senate every session for many years, none of which have passed.

I am told that this current bill has a prognosis of about zero percent for passage and probably will not even be voted out of committee for full congressional consideration. These bills are designed to allow artists (and writers and musicians) a fair-market-value charitable tax deduction for gifts of their own artwork to qualifying tax-exempt and nonprofit museums and other institutions.

This is not anything new. Here is a quotation from an article by me in *State of the Arts* in 2007: "The United States Congress has made several attempts at passing this tax-relief measure to benefit artists, writers and musicians. The bills have always failed. The current proposed legislation (*in 2007*), titled The Artist-Museum Partnership Act (Senate Bill S. 548 and House Bill H.R. 1524) remains pending but unpassed. Artists are encouraged to get in touch with their Senators and Congressmen to request their voting for the bills."

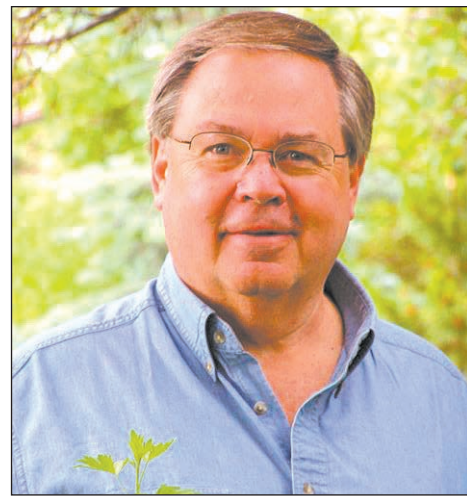
Things are still the same!

Purchase price can't be deducted

Next, we have the related problem that results when a purchaser at a charitable art auction attempts to deduct his purchase price as a charitable deduction. If there is an audit, the deduction will be denied.

It has long been the law that such purchases are not eligible for charitable deductions. So long as a buyer receives something of value, there is no donation. There is no difference in buying a piece of artwork from a charitable auction and in buying it downtown at a commercial gallery. The buyer pays for the painting and gets the painting. There is no donation. There is a purchase.

I realize that many people do this, but it is not supported by the law or IRS regulations. This is so even when the sponsor or event auctioneer encourages high bidding because the proceeds are going to benefit the charitable organization and may be deductible.



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To repeat, the buyer is receiving an item of value in return for his payment so there is no donation even though the payment is actually made to the organization.

For the same reason, buyer's premiums that are so often charged at auctions are not deductible. Going a step further, the buyer has no choice about paying a buyer's premium, and therefore there is no donative intent and no donation.

Nonprofit, tax exempt or both?

On a related note, when a potential donor is dealing with a charitable organization, there are two concepts that are important. "Non-profit" is a relationship between the organization and the state in which it is organized. "Tax exempt" is a relationship between a nonprofit organization and the IRS in which the organization has satisfied the IRS with objective evidence that it is qualified for 501(c) (3) or similar treatment justifying tax-exempt donations.

An organization may be nonprofit or tax-exempt or both. In order for a donor to receive a charitable tax deduction for his donations, the organization must be both nonprofit and tax exempt.

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Online resources for museums

Museum workers will find a number of valuable resources on the internet, including:

• **Global Museum:** www.globalmuseum.org: Check out museum-education courses throughout the world, post resumes (for a fee), check job listings, and much more.

• **National Council on Public History,** www.ncph.org: Hook up to a variety of museum programs on the National Council on Public History website, including employment opportunities, job links, and more.

Tech Talk: Security and high-tech scammers

In this high-tech world, there seems to be a constant stream of news on technology crime and scams: millions of credit cards stolen from stores, hackers attacking government systems, security holes in brand-new smart phones.

High-tech scammers can hit close to home, and are as close as an email. We all should all be wary of opening things in emails from people we don't know. But in my recent experience, scammers are also working the phones, and they can be persuasive.

Last month, a friend of mine called me about needing help with his computer. Or rather, he called me about someone who had called him to help with his computer. He had gotten a phone call out of the blue from someone who described himself as a computer technician from "Windows," and the technician said they had detected over the internet that my friend's PC was infected with a virus.

Problem was, the caller was a scammer. And my friend – who is in his 70s – was convinced it was a legitimate call. The scammer wanted to install anti-virus software for a small fee. But more likely, the

software was a backdoor so the scammer could control the PC from afar and steal his personal information, like passwords, bank-account logins, and anything else on the PC.

My friend told me he tried following the over-the-phone instructions to download and install the software on his PC, but he (luckily) couldn't follow the scammer's instructions close enough. The scammer gave up and said he would call back later. So my friend called me, asking for help, still convinced the caller was legitimate.

I explained what was happening, that it was all a scam and to hang up if the scammer called back. I knew he had security software on his PC that I had installed, so he was safe. And I could tell that the scammer hadn't succeeded in installing anything.

This kind of scam can happen to anyone. Modern technology is complex to the point of being mysterious, and it can be intimidating to



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get a phone call or email from someone trying to convince you they know more than you do, and that, for a small price, they can fix your tech issues.

How would you respond to someone knocking on your front door, offering to help with your PC? I doubt you would let them in your door and give them full control of your PC.

The bottom line is that no one from Microsoft or "Windows" is going

to call out of the blue and offer to help with your PC. No one from Apple is going to call and say your iPhone is infected with a virus and they need to help.

Any legitimate emails you get from such companies will ask you to manually go to their site and login, not click an email link to take care of the issue.

There's no need to be paranoid about the tech world, but it is safe to be wary.